

REMARKS

This responds to the Office Action mailed on May 27, 2004.

Claims 1-3, 5-6, 11-12 and 20 are amended, claims 8 and 13 are canceled, no claims have been added; as a result, claims 1-7, 9-12 and 14-26 are now pending in this application.

§102 Rejection of the Claims

Claims 1-12 and 14-26 stand rejected under 35 USC § 102(b) as being anticipated by Karlen et al. (U.S. Patent 6,190,647). The Karlen et al. reference makes mention of “copolymers of acrylic acid or methacrylic acid,” but does not describe these materials as being “film formers.” Instead, the Karlan reference describes the copolymers of acrylic acid or methacrylic acid as being “thickeners.” The Karlan reference describes film formers in column 3. Also, the Karlan patent describes in col. 2, lines 16-23, that the acrylic or methacrylic acid groups in the polymers are neutralized by organic or inorganic bases, unlike what is claimed. Also, the Karlan patent describes a concentration for the treated copolymers of 0.01 to 10 percent. The claimed invention describes a concentration that is over 20 percent by weight. Furthermore, the Karlan reference does not describe elasticity features or softness at all. Because the Karlan reference does not include each and every element claimed, the Karlan reference does not anticipate the claimed invention.

§103 Rejection of the Claims

Claims 1-12 and 14-26 stand rejected under 35 USC § 103(a) as being unpatentable over Samain et al. (U.S. Patent 6,524,596) in view of Karlen (U.S. Patent 6,190,647). The Samain patent does not describe the gel claimed which is as follows: A cosmetic gel comprising:

a film-forming agent [comprising] selected from the group consisting of an acrylate copolymer [or] and an acrylate derivate, wherein the film-forming agent is emulsifiable with water; and a[n aliphatic hydrocarbon] solvent selected from the group consisting of an aliphatic hydrocarbon and[, optionally,] a volatile silicone derivate wherein the aliphatic hydrocarbon solvent and[, optionally,] volatile silicone derivate solvent are not miscible with water and are emulsifiable with [one or more water-based ingredients;] the film

forming agent [and ingredients having concentrations that are a pre-selected fraction of concentration of the aliphatic hydrocarbon solvent ;
a non-ionic emulsifier; and
water] wherein the film-forming agent has a concentration over 20 percent by weight of the gel, wherein the gel has an elasticity that is 4 to 5 times greater than the elasticity of the film-forming agent alone and the gel has a softness greater than the film-forming agent.

The product described in the Samain reference is described as being sticky enough to keep strands of hair in place. The claimed invention has an elasticity and softness which is not mentioned in either the Samain patent or the Karlen patent. The Samain reference does not describe a gel with the components claimed and the properties claimed.

The combination of Karlen and Samain do not describe the gel having the ingredients claimed in the concentrations claimed with the properties claimed. Therefore, Applicant asserts that these references do not render the claims obvious.

Double Patenting Rejection

Claims 1-12 and 14-26 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,523,565. Applicants submitted a Terminal Disclaim with the Amendment and Response filed on July 22, 2003. Applicants have attached a copy of the Terminal Disclaimer filed on July 22, 2003 along with a copy of the date-stamped postcard.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

YELENA LOGINOVA ET AL.

By their Representatives,

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Date 26 Oct 04

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 26th day of October, 2004.

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Signature